The 16th/18th June, 1971

No. 6059-4-Lab-71/19797.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workmen and the management of M/S Ego Metal Works, Gurgaon.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 135 of 1970

between

SHRI VASDEV, WORKMAN AND THE MANAGEMENT OF M/S EGO METAL WORKS, GURGAON

Present.—

Shri Vasdev concerned workman with Shri Onkar Parshad authorised representative.

Shri Raminder Singh Chawala, Administrative Manager with Shri D. C. Chadha, for the management.

AWARD

Shri Vasdev concerned workman had been in the service of M/s Ego Metal Works, Gurgaon, since 6th July, 1966. The management brought him under retrenchment with effect from 1st July, 1970, *vide* retrenchment notice, dated 6th May, 1970 Ex. M. W. 1/1. Feeling aggrieved, he approached the management for his reinstatement contending that his retrenchment from service was illegal. The management, however, did not accede to his request. He, therefore, took up the matter before the Conciliation Officer, Gurgaon,—*vide* demand notice, dated 9th July, 1970 but without any success.

On receipt of the failure report from the Conciliation Officer, Gurgaon. The Governor of Haryana, in exercise of the powers conferred under clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal,—*vide* order No. ID-GG/22/1-70/50077, dated 7th December, 1970.

Whether the retrenchment of Shri Vas Dev was justified and in order ? If not, to what relief is he entitled ?

On receipt of the reference, notices were given to the parties and they filed their respective written statements. In the claim statement put in on behalf of the workman on 1st February, 1971, it was urged that his retrenchment was in violation of the provisions of section 25F of the Industrial Disputes Act, 1947, since the retrenchment compensation due to him had not been paid in full. It was further urged that he had been brought under retrenchment previously also but on raising the dispute he had been reinstated on payment of full back wages and that he was entitled to the same relief on account of his illegal retrenchment now.

The management filed the written statement on 14th February, 1971, with the allegations that the present workman was the juniormost in his category and he had been paid all his legal dues at the time of retrenchment. It was further urged that he was not the only worker brought under retrenchment and a large number of workmen had been retrenched due to shrinkage of work and shortage of material. The management had also raised a preliminary objection that the dispute had not been properly espoused and Shri Onkar Parshad the union leader had no valid authority to raise the demand on behalf of the workman. In the rejoinder filed on behalf of the workman on 18th March, 1971 the above contentions were disputed and the claim of the workman for reinstatement with continuity of service and full back wages was reiterated.

The aforesaid preliminary objection was, however, not pressed on behalf of the management obviously because the present dispute was covered by section 2A of the Industrial Disputes Act which entitled an individual worker to raise a dispute against his dismissal, retrenchment etc., even though no other workman or union had sponsored the dispute. So, the only issue that arose for determination in the case was precisely the same as per the term of reference and no other issue was claimed.

The management has examined Shri Raminder Singh Chawala, Administrative Manager and reliance has been placed upon documents including the retrenchment notice Ex. M. W.1/1, receipt of payment of Rs 241 to Shri Vasdev Ex. M.W.1/2, copy of the intimation sent to the Government regarding retrenchment Ex. M.W.1/3,—*vide* postal receipt Ex.M.W.1/4, and A.D. receipts Ex's M.W.1/5 to M.W.1/9, seniority list of semi-skilled (b) group workers Ex. M.W.1/10, receipt of payment of Rs. 6 to Shri Vasdev on account of increment as from 1st May, 1970 Ex. M.W. 1/11.

Shri Vasdev concerned workman has himself come into the witness box and produced a copy of the failure report submitted by the Conciliation Officer, Gurgaon to the Government leading to the present reference.

I have heard the learned representatives of the parties and considered the facts on record. It is common ground between the parties that Shri Vasdev had put in 4 years service as a semi-skilled workman before he was brought under retrenchment with effect from 1st July, 1970. He has challenged the retrenchment mainly on two grounds, firstly, that there was no justification for his retrenchment as workers junior to him had been retained in service and, secondly, that retrenchment compensation due had not been paid in full by the management. The management has not been able to refute the above contentions successfully. A persual of the seniority list Ex. M.W.1/2 read with the statement of the Administrative Manager Shri Raminder Singh Chawala, M.W.1, would show that several other workers who were junior to Shri Vasdev and were getting lesser wages had been retained in service. It has been urged on behalf of the management that these other workers were of semi-skilled 'A' category where as Shri Vasdev belonged to semi-skilled (b) category of the workers, but all were admittedly semi-skilled workers and it has not been explained on what basis the two categories of the workers had been formed and what was the justification for treating Shri Vasdev junior to other workers in the matter of retrenchment. He has made a categorical statement that he was capable of and had been working on the types of machines where the other workers junior to him had been working. It would thus appear that the well recognised principle of first come last go had not been observed by the management while bringing this workman under retrenchment.

The retrenchment order of Shri Vasdev has got to be struck down on other important ground also. According to him, the retrenchment compensation due was not paid in full at the time of retrenchment. Shri Raminder Singh Chawala has admitted in so many words that Shri Vasdev had earned an increment of Rs 6 with effect from 1st May, 1970 raising his wages to Rs 126 P.M. But he was paid at the rate of Rs 120 P.M.,– *vide* receipt Ex. M.W.1/2. He was paid an increment of Rs 6 for the month of May, 1970 on 1st July, 1970,—*vide* receipt Ex. M.W.1/11. But this amount of increment was not paid to him for the month of June, 1970. Similarly the retrenchment compensation paid to him taking into consideration the length of his continuous service which was 4 years was admittedly less by Rs 12. An attempt has been made on behalf of the management to explain that Shri Vasdev was offered the increment of Rs 6 for the month of June at the time of his retrenchment but he had refused to accept the same. There is, however, no evidence to support his contention. It has, further been stated by Shri Raminder Singh Chawala, M.W.1 that the papers regarding increments of the workers were put up in routine which took time to settle and since the retrenchment of Shri Vasdev had been brought about in the mean-time, the amount due on account of increment was not included in the retrenchment compensation paid to him but that was not fault of the workman. He had admittedly earned the increment of Rs 6 with effect from 1st May, 1970 thus raising his wages to Rs 126 P.M. and the increment for the month of May, 1970 was admittedly paid to him on 1st July, 1970,—*vide* receipt Ex. M.W.1/11. It has not been explained as to why the amount of the increment for the month of June, 1970 and service compensation amounting to Rs 12 was also not paid on the due date. The management had apparently no difficulty in working out the full amount of retrenchment compensation payable to Shri Vasdev. At any rate, the fact remains that there was no compliance with the mandatory provisions of section 25F (R) for the Industrial Disputes Act, 1947, with regard to the payment of retrenchment compensation and as such, the retrenchment of Shri Vasdev can not be held to be justified and in order. The issue is accordingly decided against the management.

In view of the above, the claim of Shri Vasdev is well-founded and he is entitled to reinstatement with continuity of his previous service and full back wages and I make my award accordingly. In the circumstances, there shall be not order as to costs.

P. O. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated 28th May, 1971.

No. 522, dated the 28th May, 1971

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated the 28th May, 1971.

The 16th/17th June, 1971

No. 6087-4Lab-71/19723.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workmen and the management of Municipal Committee, Jagadhri.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 117 of 1970

between

THE WORKMEN AND THE MANAGEMENT OF M/S MUNICIPAL COMMITTEE, JAGADHRI

Present.—

Shri Madhu Sudan Saran Cowshish, for the workmen.

Shri Brij Haritash, for the management.

AWARD

The Governor of Haryana, in exercise of the powers conferred under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute between the Municipal Committee, Jagadhri and its workmen for adjudication to this Tribunal,—*vide* order No. ID/UMB/12-B-70/25772—76, dated 26th August, 1970 :—

(1) Whether the Committee be required to contribute towards provident fund of their employees on the whole consolidated pay instead of basic pay plus 50 per cent of D.A. If so, from which date and with what details ?

(2) Whether the Peons, Chowkidars and Chaprasies should be paid D.A. @Rs 15 per mensem for the month of April, 1964. If so ; with what details ?

(3) Whether the Moharrirs in the Octroi Department should be supplied with Uniforms. If so ; with what details ?

(4) Whether Shri Muthra Dass, Mali is entitled to the additional D.A. @ Rs 10 per mensem for the period from 1st April, 1964 to 31st December, 1964 and at the rate of Rs 2.50 per mensem from 1st January, 1965 onwards. If so ; with what details?

(5) Whether the Class IV employees should be paid their arrears of increased D.A. with effect from 1st April, 1961. If so ; with what details ?

(6) What amount of wages should be paid to Shri Ram Chander with effect from 1st April, 1965 and onwards and with what details ?

(7) Whether the Octroi Department employees should be transferred to Sadar Chungi in rotation ? If so; with what details ?

(8) Whether the workers of all categories should be allowed the grade and scale of pay as are allowed by the Haryana Government to their employees in corresponding categories. If so ; from which date and with what details ?

(9) Whether any gratuity Scheme should be introduced for the workers ? If so ; from which date and with what details ?

(10) Whether sanctioned quantity of Coal for the outside posts of the Municipal Committee should be enhanced by 25 per cent ? If so ; with what details ?

On receipt of the reference notices were given to the parties and they have filed their respective statements. A preliminary objection has been raised on behalf of the respondent Municipal Committee that the Octroi Department is not an industry and as such there is no industrial dispute between the parties within the meaning of the Industrial Disputes Act and the present reference is consequently invalid. The following issue arose for determination on the above objection. :—

"Whether the Octroi Department of the Committee is not an industry and the reference is therefore illegal ?"

The parties have led no evidence. Arguments have been addressed at considerable length and I have been referred to a number of authorities on both sides. The contentions put forward on behalf of the workmen are :—

(1) That the Municipal Committee which acts under the Punjab Municipal Act, 1911 functions as a single unit and transfers and promotions of the employees from one department to another are permissible.

(2) That the predominant function of the Octroi Department is to impose levy and collect octroi taxes on the goods brought from outside within the octroi limits of the Municipal Committee.

(3) That the taxes so collected by the Octroi Department go into the general Municipal fund out of which several activities are carried on in the public interest thus rendering services of the community at large.

It is, therefore, argued that the Octroi Department which engages itself in the imposition, levy and collection of the Octroi taxes and helps the Municipal Committee in rendering material services to the community at large should be treated as an "Industry" within the meaning of section 2(j) of the Industrial Disputes Act, 1947. I have been referred to 1960-I-LLJ-523 (Supreme Court) Corporation of City of Nagpur *versus* its workmen, 1960 II-LLJ-557 (Bombay High Court) Sirur Municipality and its workmen, 1970—Labour Industrial cases 863 (Punjab and Haryana High Court), Workmen of Faridabad Municipal Committee *versus* K.L. Gosain; 1965-I-LLJ-652 (Punjab High Court), Municipal Committee Raikot *versus* Ram Lal Jain, 1960-I-LLJ-251, State of Bombay *versus* Hospital Mazdoor Sabha. My attention has further been invited to certain provisions of the Punjab Municipal Act, 1911 and Punjab Municipal Executive Officers Rules.

On the other hand, the case for the Municipal Committee that the Octroi Department is only discharging regal functions in the matter of collecting the octroi taxes at the prescribed rates and as it is not engaged either in production or distribution of goods nor in rendering any material services to the community, it can not be held to be an 'Industry' within the meaning of the Industrial Disputes Act. In support of the above contention reliance has been placed upon seveal authorities reported as 1963-II-LLJ-264 (Bombay High Court) Vasudevan (S) and others and Mital (S.D.) and Others, 1957-I-LLJ-720 (Supreme Court) Madras Gymkhana Club Employees Union *versus* Management Madras Gymkhana Club, 1970 Labour Industrial cases 1172 (S.C.) Safdarjang Hospital *versus* Kuldip Singh Sethi.

I have very carefully gone through the above authorities and given a considered thought to the contentions raised on both sides. The definition of the term industry has given in section 2(j) of the Industrial Disputes Act, 1947, reads as under :—

Section 2(*j*) "Industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen ;

Hon'ble the Supreme Court was pleased to observe as under in the Madras Gymkhana Club Employees Union *versus* the management of Madras Gymkahana Club (1967-II-LLJ-720) referred to above.

"It is, therefore, clear that before the definite work engaged it can be described as an industry, it must be of 'trade' or business, or 'manufacture' character or 'calling' or must be capable of being described as an undertaking resulting in material goods or material services. Now in the application of the Act, the undertaking may be an enterprise of a private individual or individuals. On the other hand, it may not. It is not necessary that the employer must always be a private individual who carries on the operation with his own capital and with aview to his own profit. The act in terms contemplates cases of industrial dispute where the Government or a local authority or a public utility service may be the employer. The expansion of the Governmental or municipal activity in fields of productive industry is a feature of all developing welfare states. This is considered necessary because it leads to welfare without exploitation of workmen and makes the production of material goods and services cheaper by eliminating profits. Government and local authorities act as individuals do and the policy of the Act is to put Government and local authorities on a par with private individuals. But Government can not be regarded as an employer within the Act if the operations are Governmental or administrative in character. The local authorities also can not be regarded as industry unless they produce material goods or render material services and do not share by delegation in governmental functions or functions incidental thereto There is no essential difference between educational institutions run by municipalities and those run by universities. And yet a distinction is sought to be made on the dishotomy of regal and municipal functions. Therefore, the word 'undertaking' must be defined as "any business or any work or project which one engages in or attempts as an enterprise analogous to business or trade." This is the test laid down in Banerji's case and followed in the Baroda Borough Municipality case. Its extension in the Corporation case was unfortunate and contradicted the earlier cases".

Now, a local body like the Municipal Committee is primarily a subordinate branch of Governmental activities which functions for public purposes through various departments. But each and every department of the Municipal Committee can not be held to be an industry as defined under section 2(j) of the Act. Whether a particular department is or is not an industry depends upon the nature of the activities carried on by that department. In the instant case, we are concerned with the Octroi Department of which the predominant function, as already observed, is to impose Levy and collect octroi taxes on goods brought within the octroi limits of the Municipal Committee . This activity is manifestly not analogous to trade or business carried on with the object of production or distribution of material goods or rendering of material services to the community at large or part

thereof, as obsered by the Hon'ble Supreme Court in the Gymkhana Club case referred to above. This is merely a regal function, like that of the Income Tax Department, discharged by this particular department of the Municipal Committee by virtue of the delegation of the necessary powers in this behalf by the Government, and as such, it does not fall within the ambit of industry as defined in section 2(j) of the Act. It could, of course, be held to be an industry if it was engaged in the production or distribution of meterial goods or in rendering material services to the publi ; The material services of the nature contemplated by the verious authorities cited above may be rendered by some other departments of the Municipal Committee like the Fire Brigade Department, Lighting Department, Water Works Department, Health Department, as held in Nagpur City of Corporation decision. But that is not the case here.

For the reasons aforesaid, I have no hesitation in holding that the Octroi Department of the Municipal Committee which is not embarked on any economic activity analogous to a trade or business, carried on for the purpose of production or distribution of material goods or for rendering material services to the public at large or any part thereof, is not an indusrtry within the meaning of section 2(j) of the Industrial Disputes Act. The preliminary issue is decided accordingly.

In view of the above, no further proceedings are called for in the case for the simple and obvious reason that the Octroi Department being not an industry, there is no industrial dispute between the parties and the present reference is apparently incompetent. I give my award accordingly but without making any order as to costs.

O.P. SHARMA,

Dated 28th May, 1971. **Presiding Officer,**
Industrial Tribunal, Haryana,
Faridabad.

No. 533, dated 31st May, 1971

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,

Dated 28th May, 1971 **Presiding Officer,**
Industrial Tribunal, Haryana,
Faridabad.

No. 6090-4Lab-71/19725.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workmen and the management of M/s Municipal Committee, Pataudi.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 77 of 1970

Between

SHRI IRSHAD ALI WORKMAN AND THE MANAGEMENT OF M/S MUNICIPAL COMMITTEE, PATAUDI

Present :

Shri H.R. Dua for the workmen.

Shri Krishan Lal for the management.

AWARD

The Governor of Haryana, in exercise of the powers conferred under clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute between the Municipal Committee, Pataudi and its workmen for adjudication to this Tribunal ,—*vide* order No. ID/FD/434A/9921-33, dated 6th April, 1970.

Whether the termination of services of Shri Irshad Ali was justified and in order. If not, to what relief is he entitled ?

On receipt of the reference, notices were given to the parties and they have filed their respective statements. A preliminary objection has been raised on behalf of the respondent Municipal Committee that the Octroi Department is not an industry and as such there is no industrial dispute between the parties within the meaning of the Industrial Disputes Act and the present reference is consequently invalid. The following issue arose for determination on the above objection :—

Whether the Octroi Department of the Committee is not an industry and the reference is, therefore illegal ?

The parties have led no evidence. Arguments have been addressed at considerable length and I have been referred to a number of authorities on both sides. The contentions put forward on behalf of the workmen are :—

(1) that the Municipal Committee which acts under the Pubjab Municipal Act. 1911, functions as a single unit and the transfers and promotions of the employees from the Department to another are permissible.

(2) that the predominant functions of the Octroi Department is to impose levy and collect octroi taxes on the goods brought from outside within the octroi limits of the Municipal Committee.

(3) that the texes so collected by the Octroi Department go into the general Municipal fund out of which several activities are carried on in the public interest thus rendering services of the community at large.

It is, therefore, argued that the Octroi Department which engages itself in the imposition, levy and collection of the Octroi taxes and helps the Municipal Committee in rendering material services to the community at large should be treated as an "Industry" within the meaning of section 2(1) of the Industrial Disputes Act, 1947. I have been referred to 1960-I-LLJ-523 (Supreme Court) Corporation of City of Nagpur *vs.* its workmen, 1960-II-LLJ-657 (Bombay High Court) Sirur Municipality and its workmen, 1970—Labour Industrial cases 863 (Punjab and Haryana High Court), Workmen of Faridabad Municipal Committee *versus* K.L. Gosain ; 1965-I-LLJ-652 (Punjab High Court), Municipal Committee, Rajkot *versus* Ram Lal Jain, 1960-I-LLJ-251, State of Bombay *versus* Hospital Mazdor Sabha. My attention has further been invited to certain provisions of the Punjab Municipal Act, 1911 and Punjab Municipal Executive Officers Rules.

On the other hand, the case for the Municipal Committee is that the Octroi Department is only discharging regal functions in the matter of collecting the octroi taxes, at the prescribed rates, and it is not engaged either in production or distribution of goods nor in rendering any material services to the community. It can not be held to be an "Industry" within the meaning of the Industrial Disputes Act. In support of the above contention reliance has been placed upon several authorities reported as 1963-II-LLJ-264 (Bombay High Court) Vasudevan (S) and others and Mital (S.D.) and others, 1957-I-LLJ-720 (Supreme Court) Madras Gymkhana Club Employees Union *versus* Management Madras Gymkhana Club, 1970 Labour Industrial cases 1172 (S.C.) Safdarjang Hospital *versus* Kuldip Singh Sethi.

I have very carefully gone through the above authorities and given a considered thought to the contentions raised on both sides. The definition of the term industry, as given in section 2(j) of the Industrial Disputes Act, 1947, reads as under :—

Section 2(j) :

"Industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen ;

Hon'ble the Supreme Court was pleased to observe as under in the Madras Gymkhana Club Employees Union *versus* the Management of Madras Gympkhana Club (1967-II-LLJ-720) referred to above—

"It is, therefore, clear that before the definite work engaged it can be described as an industry, it must be of 'trade' or business, or 'manfacture' character or 'calling' or must be capable of being described as an undertaking resulting in material goods or meterial services. Now in the application of the Act, the undertaking may be an enterprise of a private individual or individuals On the other hand, it may not. It is not necessary that the employer must always be a private individual who carries on the operation with his own capital and with a view to his own profit. The act in terms contemplates cases of industrial dispute where the Government or a local authority or a public utility services may be the employer. The expansion of the Governmental or municipal activity in fields of productive industry is a feature of all development welfare States. This is considered necessary because it leads to welfare without exploitation of workmen and makes the production of material goods and services cheaper by eliminating profits. Government and local authorities act as individuals do and the

policy of the Act i to pu Government and local authorities on a par with private individuals But Government cannot be regarded as an employer within the Act if the operations as Governmental or administrative in character. The local authorities also can not be regarded a industry unless they produce material goods or render material services and do not shar by delegation in Governmental functions or functions incidental thereto. There is nc essential difference between educational institutions run by municipalities and those run b universities. And yet a distinction is sought to be made on the dishotomy of regal anc municipal functions. Therefore, the words 'undertaking' must be defined as "Any busines or any work or project which one engages in or attempts as an enterprise analogous to busi ness or trade". This is the test laid down in Banerji's case and followed in the Barod Borough Municipality case. Its extension in the Corporation case was unfortunate and contradicted the earlier cases".

Now, a local body like the Municipal Committee is primarily a subordinate branch of Government activities which functions for public purposes through various departments. But each and every department of the Municipal Committee can not be held to be an industry as defined under section 2(J) of the Act. Whether a particular department is or is not an industry depends upon the nature of the activities carried on by that department. In the instant case, we are concerned with the Octroi department of which the predominant function, as already observed, is to impose levy and collect octroi taxes on goods brought within the octroi limits of the Municipal Committee. This activity is manifestly not analogous to trade or business carried on with the object of production of distribution of material goods or rendering of material services to the community at large or part thereof, as observed by the Hon'ble Supreme Court in the Gymkhana Club case referred to above. This is merely a regal function, like that of the Income Tax department, discharged by this particular department of the Municipal Committee by virtue of the delegation of the necessary powers in this behalf by the Government, and as such, it does not fall within the ambit of industry as defined in section 2(j) of the Act. It could, of course, be held to be an industry if it was engaged in the production or distribution of material goods or in rendering material services to the public. The material services of the nature contemplated by the various authorities cited above may be rendered by some other departments of the Municipal Committee like the Fire Brigade Department, Lighting Department, Water Works Department, Health Department, as held in Nagpur City of Corporation decision. But that is not the case here.

For the reasons aforesaid, I have no hesitation in holding that the Octroi Department of the Municipal Committee, which is not embarked on any economic activity analogous to a trade or business, carried on for the purpose of production or distribution of material goods or for rendering material services to the public at large or any part thereof, is not an industry within the meaning of section 2(j) of the Industrial Disputes Act. The preliminry issue is decided accordingly.

In view of the above, no further proceedings are called for in the case for the simple and obvious reason that the Octroi Department being not an industry, there is no industrial dispute between the parties and the present reference is apparently incompetent. I give my award accordingly but without making any order as to costs.

Dated 28th May, 1971.

O. P. SHARMA,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

No. 537, dated the 31st May, 1971

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,

Presiding Officer,

Dated the 28th May, 1971.

Industrial Tribunal, Haryana,
Faridabad.

No. 6091-4Lab-71/19727.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Harana, Faridabad in respect of the dispute between the workmen and the management of M/s Municipal Committee, Charkhi Dadri.

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, INUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 94 of 1970

Between

The workmen and the management of M/s Municipal Committee, Charkhi Dadri.

Present Shri Sagar Ram Gupta, for the workmen

Shri K.N. Singla, for the management.

AWARD

The Governor of Haryana, in exercise of the powers conferred under clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute between the Municipal Committee, Charkhi Dadri and its workmen for adjudication to this Tribunal, *vide* order No. ID/14747-51, dated 18th May, 1970

1. Whether the grades and Scales of Moharrirs should be fixed ? If so, with what details and from which date ?

2. Whether the action of the management in giving promotion to Shri Naval Singh ignoring Shri Manohar Lal and other who are senior to him is justified and in order ? If not, to what relief are they entitled ?

On receipt of the reference, notices were given to the parties and they have filed their respective statements. A preliminary objection has been raised on behalf of the respondent Municipal Committee that the Octroi Department is not an industry and as such there is no insutrial dispute between the parties within the meaning of the Industrial Disputes Act and the present reference is consequently invalid. The following issue arose for determination on the above objection.

"Whether the reference is not valid because the octroi department was the respondent company is not an industry ?"

The parties have led no evidence. Arguments have been addressed at considerable length and I have been referred to number of authorities on both sides. The contentions put forward on behalf of the workmen are :—

1. That the Municipal Committee which acts under the Punjab Municipal Act, 1911 functions as a single unit and the transfers and promotions the employees from one Department to another are permissible.

2. That the predominant function of the Octroi Department is to impose, levy and collect Octeroi taxes on the goods brought from outside within the octroi limits of the Municipal Committee.

3. That the taxes so collectd by the Octroi Department go into the general Municipal fund out of which several activities are carried on in the public interest thus rendering services of the community at large.

It is, therefore, argued that the Octroi Department which engages itself in the imposition, levy and collection of the Octroi taxes and helps the Municipal Committee in rendering material services to the community at large should be treated as an "Industry" within the meaning of section 2 (J) of the Industrial Disputes Act, 1947. I have been referred to 1960-II-LLJ-523 (Supreme Court) Corporation of City of Nagpur *Vs.* its workmen, 1969-II-LLJ-657 (Bombay High Court) Sirur Municipality and its workmen, 1970-Labour Industrial cases 803 (Punjab and Haryana High Court), Workmen of Faridabad Municipal Committee *Vs.* K.L. Gosain, 1965-II-LLJ-652 (Punjab High Court), Municipal Committee Rajkot *Vs.* Ram Lal Jain, 1960-I-LLJ-251, State of Bombay *Vs.* Hospital Mazdoor Sabha. My attention has further been invited to certain provisions of the Punjab Municipal Act, 1911 and Punjab Municipal Executive Officers Rules.

On the other hand, the case for the Municipal Committee is that the Octroi Department is only discharging legal functions in the matter of collecting the octroi taxes, at the prescribed rates, and as it is not engaged either in production or distribution of goods nor in rendering any matrial services to the community, it can not be held to be an "industry" within the meaning of the Industrial Disputes Act. In support of the above contention reliance has been placed by the learned counsel on authorities reported as 1963-II-LLJ-264 (Bombay High Court) Vasudevan (S) and others and Municipal Committee and others, 1957-I-LLJ-720 (Supreme Court) Madras Gymkhana Club Employees Union *Vs.* Management of Madras Gymkhana Club, 1970 Labour Industrial cases 1172 (S.C.) Safdarjung Hospital *Vs.* Baldip Singh and others.

I have very carefully gone through the above authorities and given a considered thought to the contentions raised on both sides. The definition of the term industry, as given in section 2(J) of the Industrial Disputes Act, 1947, reads as under :—

Section 2(J)—

"Industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen ;

Hon'ble the Supreme Court was pleased to observe as under in the Madras Gymkhana Club Employees Union *Vs.* the management of Madreas Gymkhana Club (1967-II-LLJ-720) referred to above.

"It is , therefore, clear that before the definite work engaged in can be described as an industry, it must be of 'trade ' or business, or 'manufacture' character or 'calling" or must be capable of being described as an undertaking resulting in material goods or material services. Now in the application of the Act, the undertaking may be an enterprise of a private individual or individuals. On the other hand, it may not. It is not necessary that the employer must always be a private individual who carries on the operation with his own capital and with a view to his own profit. The Act in terms contemplates cases of industrial dispute where the Government or alocal authority or a public utility service may be the employer. The expansion of the Governmental or municipal activity in fields of productive industry is a feature of all developing welfare states. This is considered necessary because it leads to welfare without exploitation of workmen and makes the production of material goods and services cheaper by eliminating profits. Government and local authorities act as individuals do and the policy of the Act is to put Government and local authorities on a par with private individuals. But Government cannot be regarded as an employer within the Act if the operations are Governmental or administrative in character. The local authorities also cannot be regarded as industry unless they produce material goods or render material services and do not share by delegation in governmental functionsor functions incidential thereto. There is no essential difference between educational institutions run by municipalities and those run by universities. And yet a destinction is sought to be made on the dishotomy of regal and municipal functions. Therefore the words 'undertaking' must be defined as" any business or any work or project which one engages in or attempts as an enterprise analogous to business or trade. " This is the test laid down in Banerji's case and followed in the Baroda Borough Municipality case. Its extension in the Corporation case was unfortunate and contradicted the earlier cases."

Now, a local body like the Municipal Committee is primarily a subordinate branch of Governmental activities which functions for public purposes through various departments. But each and every deartment of the Municipal Committee cannot be held to be an industry as defined under section 2(j) of the Act. Whether a particular department is or is not an industry depends upon the nature of the activities carried on by that department. In the instant case, we are concerned with the Octroi Departmnt of which the predominant function, as already observed, is to impose levy and collect octroi taxes on goods brought within the octroi limits of the Municipal Committee. This activity is manifestly not analogous to trade or busiess carried on with the object of production or distribution of material goods or rendering of material services to tne community at large or part thereof, fas obsered by the Hon'ble Supreme Court in the Gymkhana Club case referred to above. This is merely a legal bunction like that of the Income Tax Department, discharged by this paticular departent of the Municipal Committee wy vartue of the delegation of the neces ary powers in this behalf by the Government, and as such, it does no fall it ithin the ambit of industry as defined in section 2 (j) of the Act. It could, of course, be held to be an industry if T was engaged in the production or distribution of material goods or in rendering material services to be public. he material services of the nature contemplated by the various authorities cited above may be rendered by some other departments of the Muncipal Committee Like the Fire Brigade Departmet, Lighting Department, Water Works Department, Health Department, as held in Nagpur City of Corporation decision. But that is not the case here.

For the reasons aforesaid, I have no hestiation in holding that the Octroi Department of the Municipal Committee, which isnot embarked on any economic activity analoguous to a trade or business, carried on for the purpose of production or distribution of material goods or for rendering material services to the pubic at largeor any part thereof, is not an industry within the meaning of sestion 2(j) of the Industrial Disputes Act. The preliminary issue is decided accordingly.

In view of the above, no further proceedings are called for in the case for the simple and obvious reason that the Octroi Department being not an industry, there is not industrial dispute between the parties and the present reference is apparently incompetent. I give my award accordingly but without making any order as to costs.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated 28th May, 1971.

No. 536, dated the 31st May, 1971.

Forwarded (four copies) to the Secretary, to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad

The 17th June, 1971

No. 6081-4 Lab-71/19770.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947, Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal Haryana, Faridabad in respect of the dispute between the workmen and the management of M/s Dabwali Transport Com., Dabwali.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, NDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 5 of 1971

between

THE WORKMEN AND THE MANAGEMENT OF M/S DABWALI TRANSPORT COMPANY, DABWALI

Present—

Shri Rachhpal Singh, for the workmen.

Nemo, for the management.

AWARD

By Order No. ID/HSR/43-A/3213-17, dated 25th January, 1971, the Governor of Haryana, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred for adjudication to this Tribunal the following disputes existing between the management of M/s Dabwali Transport Co., Dabwali and their employees : —

(1) Whether the grades and scales of pay of difference categories of workmen should be revised ? If so ; with what details and from which date ?

(2) Whether the workmen should be given dearness allowance and whether it should be linked with the cost of living index ? If so ; with what details and from which date ?

(3) Whether the gratuity scheme should be introduced in the factory ? If so ; with what details and from which date ?

On receipt of the reference notices were given to the parties and they have filed their respective statements It is, however, not necessary to go into the merits of the case as an amicable settlement has been brought about between the parties, as per terms given in the memorandum of settlement Ex. W. W. 1/1 Annexure 'A', which are fair and reasonable, and they want the award to be made accordingly.

I, therefore, pass the award in teams of settlement Annexure 'A' which shall form a part of the award. There shall be no order as to costs.

Faridabad :
Dated the 28th May, 1971.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

No. 523, dated 28th May, 1971.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated 28th May, 1971.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

MEMORANDUM OF SETTLEMENT UNDER SECTION 18 (1) OF THE INDUSTRIAL DISPUTES ACT, 1947

Representative of the Parties —

(1) Management .. Shri Gurraj Singh Dhillon, Managing Director, M/s Dabwali Transport ii Transport Co., (P) Ltd., Dabwali Mandi

(2) Workmen .. Com. Richhpal Singh, General Secretary, Hissar District Transport Workers Union, Registered, Nagori Gate, Hissar.

SHORT RECITAL OF THE CASE

Demand Notice dated 18th/19th May, 1970 which is pending before the Industrial Tribunal, Haryana, Faridabad as reference No. 5 of 1971 and the date of hearing is fixed for 24th May, 1971.

Terms of the settlement

Ex. W. W. 1/1.
The 24th May, 1971

The management has agreed to implement the wage board recommendations in the following manner with the consultation of the Union —

(1) The management has agreed to implement the recommendations with effect from 1st May, 1971 and the workers have agreed to forego the arrears due from 1st April, 1969 to 30th April, 1971

(2) The minimum wages rates fixed by the Haryana Government,—*vide* their Notification No. 5194-3-Lab-70/23353, dated 6th August, 1970 workout to more or less equal to grade and scales recommended by the Wage Board.

It is thus agreed that the implementation of the minimum wages shall serve the purpose for implementation of the recommendations of the Wages Board regarding grade and scales ;

(3) The management has agreed to implement the recommendations of gratuity scheme except inste ad of one months' basic wages, it shall be 15 days of consolidated wages.

It is further agreed that the copies of the settlement be forwarded to the Govern ment authorities and Industrial Tribunal , Haryana, Faridabad. for record and request for passing an award accordingly.

Representative of the employer. Representative of the workmen.

(Sd.) GURAJ SINGH DHILLON. (Sd.) RACHHPAL SINGH.

Witnesses —

(1) (Sd) KARNAIL SINGH.

(2) (Sd) .....

Dated 17th May, 1971.

No. 6093-4 Lab-71/19772.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal Haryana, Faridabad in respect of the dispute between the workmen and the management of M/s Municipal Committee, Shahabad (District Karnal).

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 6 of 1970

between

SHRI RAM DITTA MAL WORKMAN AND THE MANAGEMENT OF M/S MUNICIPAL COMMITTEE, SAHABAD (DISTRICT KARNAL)

Present—

Shri Ram Ditta Mal concerned workman and Shri J. D. Bakshi for the workman.

Shri D. S. Rekhi with Shri Mitter Sain for the management.

AWARD

The Governor of Haryana, in exercise of the powers conferred under clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute between the Municipal Committee, Sahabad (Karnal) and its workman for adjudication to this Tribunal,—*vide* Order No. ID/852-56, dated 12th January, 1970—

Whether the termination of services of Shri Ram Ditta Mal is justified and in order ? If not ; to what relief he is entitled ?

On receipt of the reference, notices were given to the parties and they have filed their respective statements. A preliminary objection has been raised on behalf of the respondent Municipal Committee that the Octroi Department is not an industry and as such there is no industrial dispute between the parties within the meaning of the Industrial Disputes Act and the present reference is consequently invalid. The following issue arose for determination on the above objection.

"Whether Octroi Department is not an industry ?"

The parties have led no evidence. Arguments have been addressed at considerable length and I have been referred to a number of authorities on both sides. The contentions put forward on behalf of the workman are :—

(1) That the municipal Committee which acts under the Punjab Municipal Act, 1911 functions as a single unit and the transfers and promotions of the employees from one Department to another are permissible. ;

(2) That the predominent function of the Octroi Department is to impose, levy and collect octroi taxes on the goods brought from outside within the octroi limits of the Municipal Committee.

(3) That the taxes so collected by the Octroi Department go into the general Municipal fund out of which several activities are carried on in the public interest thus rendering services of the community at large.

It is, therefore, argued that the Octroi Department which engages itself in the imposition, levy and collection of the Octroi taxes and helps the Municipal Committee in rendering material services to the community at large should be treated as an "Industry" within the meaning of section 2 (j) of the Industrial Disputes Act, 1947. I have been referred to 1960-I-LLJ-523 (Supreme Court) Corporation of City of Nagpur *Vs* its workmen, 1960-II-LLJ-657 (Bombay High Court) Sirur Municipality and its workmen, 1970-Labour Industrial cases 863 (Punjab and Haryana High Court), Workmen if Faridabad Municipal Committee *Vs* K. L. Gosain ; 1965-I-LLJ-652 (Punjab High Court), Municipal Committee Raikot *Vs*. Ram Lal Jain, 1960-I-LLJ-251, State of Bombay *Vs*. Hospital Mazdoor Sabha. My attention has further been invited to certain provisions of the Punjab Municipal Act, 1911 and Punjab Municipal Executive Officer Rules.

On the other hand, the case for the Municipal Committee is that the Octroi Department is only discharging regal functions in the matter of collecting the octroi taxes, at the prescribed rates, and as it is not engaged either in production or distribution of goods nor in rendering any material services to the community, it cannot be held to be an "industry" within the meaning of the Industrial Disputes Act. In support of the above contention reliance has been placed upon several authorities reported as 1963-II-LLJ-264 (Bombay High Court) Vasudevan (S) and others and Mital (S. D.) and others, 1957-I-LLJ-720 (Supreme Court) Madras Gymkhana Club Employees Union *Vs*. Management Madras Gymkhana Club, 1970 Labour Industrial cases 1172 (S. C.) Safdarjang Hospital *Vs*. Kuldip Singh Sethi.

I have very carefully gone through the above authorities and given a considered thought to the contentions raised on both sites. The definition of the term industry, as given in section 2 (j) of the Industrial Disputes Act, 1947, reads as under :—

Section 2 (j).—"Industry" means any business, trade, undertaking, manufacture or calling of employers and includes, any calling, service, employment, handicrafts, or industrial occupation or avocation of workmen ;

Hon'ble the Supreme Court was pleased to observe as under in the Madras Gymkhana Club Employees Union *Vs*. the management of Madras Gymkhana Club (1967-II-LLJ-720) referred to above :

"It is, therefore, clear that before the definite work engaged in can be described as an industry, it must be of 'trade' or business or 'manufacture' character or 'calling' or must be capable of being described as an undertaking resulting in material goods or material services. Now in the application of the Act, the undertaking may be an enterprise of a private individual or individuals. On the other hand, it may not. It is not necessary that the employer must always be a private individual who carries on the operation with his own capital and with a view to his own profit.

The Act in terms contemplates cases of industrial dispute where the Government or a local authority or a public utility service may be the employer. The expansion of the Governmental or municipal activity in fields of productive industry is a feature of all developing welfare states. This is considered necessary because it leads to welfare without exploitation of workmen and makes the production of material goos and services cheaper by eliminating profits. Government and local authorities act as individuals do and the policy of the Act is to put Government and local authorities on a par with private individuals. But Government cannot be regarded as an employer within th Act if the operations are Governmental or administrative in character. The local authorities also can not be regarded a industry unless they produce material goods or render material services and do not share by delegation in Governmental functions or functions incidental tnereto . There is no essential difference between educational institutions run by municipalitles and those run by universities. And yet a destinction is sought to be made on the dishotomy of regal and municipal functions. Therefore, the words 'undertaking' must be defined as "anv business" or any work or project which one engages in or attempts as an enterprise analogous to business or trade. "This is the test laid down in Banerji's case and followed in the Baroda Borough Municipality case. Its extension in the Corporation case was unfortunate and contradicted the earller cases".

Now, a local body like the Municipal Committee is primarily a subordinate branch of Government activities which functions for public purposes through various departments. But each and every department of the Municipal Committee cannot be held to be an industry as defined under section 2 (j) of the Act. Whether a particular department is or is not an industry depends upon the nature of the activities carried on by that department. In the instant case, we are concerned with the Octroi Department of which the predominant function, as already observed, is to impose levy and collect octrol taxes on goocs brought within the ootrol limits of the Municipal Committee. This activity is manifestly not analogous to trade or business carried on with the object of prosecution or distribution of material goods or rendering of material services to the community at large or part thereof, as observed by the Hon'ble Supreme Court in the Gymkhana Club case referred to above. This is merely a regal function, like that of the Income Tax department, discharged by this particular department of the Municipal Committee by virtue of the delegation of the necessary powers in this behalf by the Government, and as such, it does not fall within ambit of industry as defined in section 2 (j) of the Act. It could, of course, be held to be an industry if it was engaged in the production or distribution of material goods or in rendering material services to the public. The material services of the nature contemplated by the various authorities cited above may be rendered by some other departments of the Municipal Committee like the Fire Brigade Department, Lighting Department, Water Works Department, Health Department, as held in Nagpur City of Corporation decision. But that is not the case here.

For the reasons aforesaid, I have no hesitation in holding that the Octroi Department of the Municipal Committee, which is not embarked on and economy activity analogous to a trade or business, carried on for the purpose of production or distribution of material goods or for rendering material services to the public at large or and part thereof, is not an industry within the meaning of section 2 (j) of the Industrial Disputes Act. The preliminary issue is decided accordingly.

In view of the above, no further proceedings are called for in the case for the simple and obvious reason that the Octroi Department being not an industry, there is no industrial dispute between the parties and the present reference is apparently incompetent. I give my award accordingly but without making any order as to costs.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

Dated the 28th May, 1971.

No. 535, dated the 31st May, 1971.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes, Act, 1947.

Dated the 28th May, 1971.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

No. 6630-4Lab-71/19714.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak, in respect of the dispute between the workmen and the management of M/s Vaktaswara Steel Rolling Mills (P) Ltd, Ballabgarh.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 201 of 1970

between

SHRI DARSHAN SINGH WORKMAN C/O INTUC MAZDOOR COUNCIL MARKET NO. 1, FARIDABAD AND THE MANAGEMENT OF M/S. VAKTASWARA STEEL ROLLING MILLS. (P) LTD., BALLABGARH

Present .—

Nemo; for the workman.

Nemo; for the management.

AWARD

Shri Darshan Singh was working as Tonsman in M/s. Vakateshwara Steel Rolling Mills (P) Ltd., Ballabgarh. He alleges that he has not been allowed to attend to his duties w. e. f. 15th July 1970 without intimating to him any reason. This gave rise to an industrial dispute. Accordingly the Governor of Haryana, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication,—*vide* Government Gazette Notification No. ID/FD/587-B/36144, dated 3rd November, 1970 —

Whether the termination of services of Shri Darshan Singh was justified and in order ? If not, to what relief is he entitled ?

On receipt of the reference usual notices were issued to the parties. The notice of the management was sent under registered cover acknowledgement. Shri Amar Singh, General Secretary, INTUC Mazdoor Council Market No. 1 was present on behalf of the workman. The service of the management could not be effected and so it was ordered that fresh notice be issued for 24th May, 1971. Notice under registered cover was again sent to the management alongwith the notice in reference No. 197/70. This time the service of the management was effected but on the date fixed neither party was present. Since the workman has not shown that the termination of his services was not justified. I hold that he is not entitled to any relief. I give my award accordingly. No order as to costs.

Dated 4th June, 1971.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 1046, dated Rohtak, the 5th June, 1971

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 6088-4Lab-71/19776.— In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal Haryana, Faridabad in respect of the dispute between the workmen and the management of Messrs Municipal Committee, Gohana (Rohtak).

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 115 of 1970

between

THE WORKMEN AND THE MANAGEMENT OF MESSRS MUNICIPAL COMMITTEE, GOHANA, (ROHTAK).

Present.—

Shri Sohan Lal for the workmen.

Shri Krishan Lal for the management.

AWARD

The Governor of Haryana, in exercise of the powers conferred under clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute between the Municipal Committee, Gohana (Rohtak), and its workmen for adjudication to this Tribunal,—*vide* order No. ID/RK/95-B-70/23317-21, dated 3rd August, 1970:—

(1) Whether the following workmen should be paid full wages for the period of suspension from 11th January, 1969 to 28th January, 1969? If so, with what details ?

(1) Shri Sohan Lal
(2) Shri Govind Singh.
(3) Shri Duli Chand.
(4) Jagdish Rai.
(5) Daulat Ram.
(6) Shri Ram Narain.

(2) Whether battery allowance should be paid to the Moharrirs? If so, with what details and from which date ?

On receipt of the reference notices were given to the parties and they have filed their respective statements. A preliminary objection has been raised on behalf of the respondent Municipal Committee that the Octroi Department is not an industry and as such there is no industrial dispute between the parties within the meaning of the Industrial Disputes Act and the present reference is consequently invalid. The following issue arose for determination on the above objection :—

"Whether the activities of the respondent Committee do not fall within the definition of the Industry, therefore, the present reference is not valid ?"

The parties have led no evidence. Arguments have been addressed at considerable length and I have been referred to a number of authorities on both sides. The contentions put forward on behalf of the workmen are —

(1) That the Municipal Committee which acts under the Punjab Municipal Act, 1911 functions as a single unit and the transfers and promotions of the employees from one Department to another are permissible.
(2) That the predominant function of the Octroi Department is to impose, levy and collect octroi taxes on the goods brought from outside within the octroi limits of the Municipal Committee.
(3) That the taxes so collected by the Octroi Department go into the general Municipal fund out of which several activities are carried on in the public interest thus rendering services of the community at large.

It is, therefore, argued that the Octroi Department which engages itself in the imposition, levy and collection of the Octroi taxes and helps the Municipal Committee in rendering material services to the community at large should be treated as an "Industry" within the meaning of section 2(j) of the Industrial Disputes Act, 1947. I have been referred to 1960-I-LLJ -523 (Supreme Court) Corporation of City of Nagpur *Vs.* its workmen, 1960-II-LLJ-657 (Bombay High Court) Sirur Municipality and its workmen. 1970-Labour Industrial cases 863 (Punjab and Haryana High Court), Workmen of Faridabad Municipal Committee *Vs.* K.L. Gosain ; 1965-I-LLJ-652 (Punjab High Court), Municipal Committee Raikot *Vs.* Ram Lal Jain,1960-I-LLJ-251, State of Bombay *Vs.* Hospital Mazdoor Sabha. My attention has further been invited to certain provisions of the Punjab Municipal Act, 1911 and Punjab Municipal Executive Officer Rules.

On the other hand, the case for the Municipal Committee is that the Octroi Department is only discharging regal functions in the matter of collecting the octroi taxes, at the prescribed rates, and as it is not engaged either in production or distribution of goods nor in rendering any material services to the community, it cannot be held to be an "industry" within the meaning of the Industrial Disputes Act. In support of the above contention reliance has been placed upon several authorities reported as 1963-II-LLJ-264 (Bombay High Court) Vasudevan (S) and others and Mital (S.D.) and others, 1957-I-LLJ-720 (Supreme Court) Madras Gymkhana Club Employees Union *Vs.* Management Madras Gymkhana Club, 1970 Labour Industrial cases 1172 (S.C.) Safdarjang Hospital *Vs.* Kuldip Singh Sethi.

I have very carefully gone through the above authorities and given a considered thought to the contentions raised on both sides. The definition of the term industry as given in section 2(j) of the Industrial Disputes Act, 1947, reads as under : -

Section 2(*j*)

"Industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.

Hon'ble the Supreme Court was pleased to observe as under in the Madras Gymkhana Club Employees Union *Vs.* the management of Madras Gymkhana Club (1967-II-LLJ-720) referred to above :—

> "It is, therefore, clear that before the definite work engaged in can be described as an industry, it must be of 'trade' or business, or 'manufacture' character or 'calling' or must be capable of being described as an undertaking resulting in material goods or material services. Now in the application of the Act, the undertaking may be an enterprise of a private individual or individuals. On the other hand, it may not. It is not necessary that the employer must always be a private individual who carries on the operation with his own capital and with a view to his own profit. The Act in terms contemplates cases of industrial dispute where the Government or a local authority or a public utility service may be the employer. The expansion of the Governmental or municipal activity in fields of productive industry is a feature of all developing welfare states. This is considered necessary because it leads to welfare without exploitation of workmen and makes the production of material goods and services cheaper by eliminating profits. Government and local authorities act as individuals do and the policy of the Act is to put Government and local authorities on a par with private individuals. But Government can not be regarded as an employer within the Act if the operations are Governmental or administrative in character. The local authorities also cannot be regarded as industry unless they produce material goods or render material services and do not share by delegation in governmental functions or functions incidental thereto. There is no essential difference between educational institutions run by municipalities and those run by universities. And yet a destinction is sought to be made on the dishotomy of regal and municipal functions. Therefore, the words 'undertaking' must be defined as 'any business or any work or project which one engages in or attempts as an enterprise analogous to business or trade.' This is the test laid down in Banerji's case and followed in the Baroda Borough Municipality case. Its extension in the Corporation case was unfortunate and contradicted the earlier cases."

Now, a local body like the Municipal Committee is primarily a subordinate branch of Government activities which functions for public purposes through various departments. But each and every department of the Municipal Committee cannot be held to be an industry as defined under section 2(j) of the Act. Whether a particular department is or is not an industry depends upon the nature of the activities carried on by that department. In the instant case, we are concerned with the Octroi Department of which the predominant function, as already observed, is to impose levy and collect octroi taxes on goods brought within the octroi limits of the Municipal Committee. This activity is manifestly not analogous to trade or business carried on with the object of production or distribution of material goods or rendering of material services to the community at large or part thereof, as observed by the Hon'ble Supreme Court in the Gymkhana Club case referred to above. This is merely a regal function like that of the Income Tax department, discharged by this particular department of the Municipal Committee by virtue of the delegation of the necessary powers in this behalf by the Government, and as such, it does not fall within the ambit of industry as defined in section 2(j) of the Act. It could, of course, be held to be an industry if it was engaged in the production or distribution of material goods or in rendering material services to the public. The material services of the nature contemplated by the various authorities cited above may be rendered by some other departments of the Municipal Committee like the Fire Brigade Department, Lighting Department, Water Works Department, Health Department, as held in Nagpur City of Corporation decision. But that is not the case here.

For the reasons aforesaid, I have no hesitation in holding that the Octroi Department of the Municipal Committee which is not embarked on any economic activity analogous to a trade or business, carried on for the purpose of production or distribution of material goods or for rendering material services to the public at large or any part thereof, is not an industry within the meaning of section 2(j) of the Industrial Disputes Act. The preliminary issue is decided accordingly.

In view of the above, no further proceedings are called for in the case for the simple and obvious reason that the Octroi Department being not an industry, there is no industrial dispute between the parties and the present reference is apparently incompetent. I give my award accordingly but without making any order as to costs.

O.P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated 28th May, 1971.

No. 538, the 31st May, 1971.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O.P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated 28th May, 1971.